

Mr. Robert F. Williams
7039 Via Pradera
San Jose, CA 95139-1152
Email service williams4064@earthlink.net

STATE OF CALIFORNIA

State Energy Resources
Conservation and Development Commission

In the Matter of:)	Docket No. 99- AFC-3
)	
Application for Certification for the)	Petition by Robert F. Williams For Order Lengthening time by 15 days for Pre Hearing Conference
)	
Metcalf Energy Center [Calpine Corporation and Bechtel Enterprises, Inc.])	

Robert F. Williams hereby petitions for an order lengthening the time to comply with the Metcalf Siting Committee Order of October 23, 2000 setting a pre hearing conference for November 30, 2000, and directing that pre hearing conference statements be submitted no later than 3:00 pm on Tuesday, November 21, 2000.

1. Petitioner requests that the time for Pre Hearing Statements be extended by 15 days, and that the date for the Pre Hearing conference be delayed by 15 days to December 15, 2000.

Note that in a separate motion also dated today, the petitioner seeks the appointment of a new Siting Committee for the Metcalf Energy Center, due to the demonstrated bias of the present siting committee. **If the new Metcalf Siting Committee is appointed, then the Prehearing conference should be delayed an additional 15 days, which accounting for holidays, would result in a pre hearing conference during the week of January 2-5, 2001**

2. The petition is made on the grounds that:

a. Extraordinary circumstances have occurred in terms of meetings and public hearings related to the Metcalf Energy Center, and due to the CISCO Systems request for a Planned Development zoning within 0.5 miles of the Plant, with associated public hearings that have imposed an unreasonable burden on members of the public.

b. The staff Analysis dated October 11, 2000 [1] was not in fact available to most parties until one week later, and comprises over 700 pages. Appendices A thru E, approximately 200 pages, on electric transmission have still not been received by this intervenor.

c. Two one half day public workshops were held on October 30-31 at the Grange Hall in North Coyote valley. The workshop revealed that there was a need to re-circulate several chapters of the staff assessment, for example transportation, because the analysis of accident

risks was incomplete, addressing only probabilities and not consequences. Members of the public could reasonably expect a delay while several chapters of the Staff Assessment were modified. Instead members of the public return to their homes to find in the mail (around November 1) a Metcalf Siting Committee order requiring pre hearing statements. The requested detail was much greater than illustrated in the Sample Issue and witness identification in the Public Advisor's booklet, [3] , see Example 20 and 22.

The accelerated schedule was also in conflict with several major actions already planned in the City of San Jose, discussed in (e) and (f) below, and required a level of detail, ad unexpected action by FERC.[4]

d. On November 1, 2000 [4] the Federal Energy Regulatory Commission [4] issued a draft order, based on its investigation of the Summer 2000 power shortfalls and very high prices, particularly June 14, 2000 power blackout in parts of the Bay area, and San Diego prices. Public comments on the FERC order are due November 23, 2000. **The FERC Final order if the draft order stands will order the replacement of the Board's of Directors of the Cal-PX and the Cal-ISO, and many other reforms. This is relevant to the Metcalf proceeding because the staff assessment has relied on the analysis supplied by President T Winters, and staff members.**

In the opinion of this party, the CAL-ISO bias confuses the analysis of the power transmission issues including calling into question the validity of the reason offered for accepting the severe and unmitigable impacts on page 8 of the SA, "...the acute need for reliable electricity to meet the increasing demand...."

The FERC order was believed to be sufficiently important that Governor Gray Davis offered video taped testimony at the November 9, 2000 public hearing [5]. The comment period to FERC closes November 23, 2000, and an order is expected shortly thereafter. **The Metcalf Prehearing conference should be delayed until at least December 15, 2000 until after the FERC order is issued.**

e. San Jose Planning Commission. Apparently unknown to the Metcalf Siting Committee, the San Jose Planning Commission schedule the Metcalf Energy Center General Plan Amendment for consideration, on November 15, 2000. Members of the public were concerned because the Staff Assessment was not yet complete, and many expected the matter to be discussed for information, and then either receive a no vote or a continuance. Nevertheless, members of the Public were required to make a major showing for the November 15 meeting, including public comment November 15 submittals to the Planning commission the prior week, by November 10, to help assure their consideration. **Considerable effort was required by members of the public to read the 47 age report by the SJ Planning Department staff, which recommended disapproval of the project. [2]**

f. Apparently the planning commission meeting came to the attention of the Metcalf Siting Committee, because on an urgent basis, the day before the meeting, by e-mail service Commissioners Laurie and Keese issued a letter, [4] that transmitted the opinion of William M Chamberlain, Chief Counsel [4]. Mssrs. Laurie and Keese state,

“We agree with our Chief Counsel’s Opinion. Accordingly we urge the City of San Jose to use the Final Staff Assessment as the environmental document of record in your proceeding.”

Issues related to the suitability of the staff assessment As a Final Environmental Impact Statement will be summarized in the separate motion and petition. Matters related to this issue have resulted in the need to appoint a new unbiased Siting Committee be to replace Mssrs. Laurie and Keese.

Suffice it to say here that there is no point in holding the evidentiary hearings, and modifying the Staff assessment to be a Final Environmental Impact Statement. The mind of Mssrs Laurie and Keese appears to be made up, there will be few if any changes if they have their way. They appear to have prejudged a matter in which they are supposed to sit as impartial judge and jury representing the entire CEC.

Time to pursue a motion for a new siting committee is considerable.

g. City Council meeting November 28. The time taken to respond to this development, and to the totally inappropriate finding and premature intrusion by Mssrs. Laurie and Keese, has nevertheless required major effort on the part of the concerned public to prepare for meetings of the City Council on November 28, two days before the Prehearing Conference currently planned for November 30.

While legal strategy is not yet clear, **I must either prepare a temporary restraining order** in Santa Clara County Superior Court, preventing the City from taking action, **or I must prepare for a restraining order or injunction** in the same court, preventing the implementation of an affirmative vote for a General Plan Amendment until such time as intervenor and other public comments on the staff assessment are complete.

3. Summary. Without the order lengthening the time, the petitioner will be denied the ability to submit a brief, and be disadvantaged thereby.

The petitioner understands the significance and importance of a timely schedule in this matter, and intends to make an incomplete, and not properly formatted Pre Hearing statement submittal as a good faith effort. Petitioner regrets that the press of the other matters cited above prevents petitioner from responding in the complete manner requested in the order dated 10/23 and received 10/31 at the staff assessment workshop. The petitioner believes the significance of these and other matters fully justifies the delay of the Pre Hearing conference, and delay in submittal of pre Hearing conference statements.

The motion is based on the pleadings and records on file in this proceeding and the following:

<input checked="" type="checkbox"/>	The foregoing declaration of Robert F. Williams
<input checked="" type="checkbox"/>	The attached memorandum of Draft FERC order of November 1, 2000
<input checked="" type="checkbox"/>	Oral and documentary evidence that may be presented at hearing
<input checked="" type="checkbox"/>	Letter of Mssrs. Laurie and Keese forwarding Chief Counsel opinion of Nov 13, 2000

Date

Signature

☒ **Check box if continuation pages are attached. (Proof of service must be attached.)**

- [1] Staff Assessment Metcalf Energy Center, Docketed 10/10/2000, 700 pages plus appendices
- [2] Report of the San Jose Planning Department Staff, November 13, 2000, 47 pages
- [3] R. Mendonca, "The Siting Process, Practice and Procedure Guide" 3rd edition, July 1999, CEC PAO Office
- [4] FERC, "Market Order Proposing Remedies for California Wholesale Electrics," issued November 1, 2000, Docket No. EL-00-95-000, Docket No. EL00-98-000, Docket No., EL-00-107-00-, Docket No. ER-00-3461-000; Docket No. ER00-3673-000, about 75 pages. Public Comment due November 23, 2000
- [5] Testimony of Governor Gray Davis, November 8, 2000 to FERC